

## MEMORANDUM

**Date:** October 14, 2016  
**To:** Transfer 81133  
**From:** Kerrie Mathews  
**Re:** Transfer Evaluation

Transfer No. 81133 for water rights 13-726, 13-727, 13-742, 13-776, 13-777 and 13-778 proposes to better define the points of diversion for the rights and create a 179-acre combined place of use for all of the rights. An ownership change proposing to split all of the rights into three pieces was filed at the same time as the transfer application. The applicants asked that the ownership changes be processed after the transfer approval.

The six water rights, as they currently exist, appear to authorize the irrigation of 320 acres. However, it is possible that there may have been some overlap between water rights 13-742 and 13-726/13-727. The 1920 Bear River Decree lists Joseph Swensen as the owner of all three rights. The place of use descriptions for the rights does not conclusively eliminate the possibility of overlap. For example, water right 13-742 describes the "irrigation of 35 acres in Section 9".

Transfer proposes reducing the total irrigated acres of the rights from 320 to 179. Even accounting for a possible overlap between some of the rights, there is still a consolidation of water rights onto fewer acres. The decrees authorize a total diversion rate of 6.40 cfs (0.02 cfs/acre on 320 acres). Some of the water rights are very junior and are rarely filled. In addition there distance between the Middle Fork point of diversion and the end of the delivery system is about 2.5 miles. The losses associated with an open ditch between these two points could be substantial. In order to promote the conservation of water resources, we will include a condition limiting the rights to 0.02 cfs per acre at the field headgate.

**Authority to file:**

Water rights 13-742, 13-726 and 13-727 are the name of Joseph Swensen. Water rights 13-776, 13-777 and 13-778 are in the name of Merintha Hansen. As stated, the 1920 Bear River Decree only provides a general description of the place of use, making it difficult to know where the water right is actually located. The general place of use includes land currently in the name of Emmett Collins, Joseph Swensen, Robert Harris, Clint Edwards, Mathew Collings and Jorgensen Farms. The application contained waivers of interest from all of the listed landowners EXCEPT Robert Harris and Jorgensen Farms.

On September 8, 2016, the Department sent a certified letter to Robert Harris and Jorgensen Farms explaining the proposed transfer and asking for a response by October 3 if they asserted any ownership interest in the rights. Robert Harris and Jorgensen Farms did not respond to the letter.

The proposed place of use is in the name of Alan, Diane and Shane Hubbard and Annette Williams. The application contained warranty deeds establishing ownership of the new place of use. The application was signed by Joseph G Ballsteadt, attorney for the applicants. There are no security interests on any of the water rights.

**Validity of the Water Right:**

The Water rights were decreed on February 14, 1920. Aerial photography shows consistent irrigation. Forfeiture does not appear to be an issue.

**Injury to Other Water Rights:**

No injury to other water rights was identified. The application was advertised, no protests were received. The water master for WD13Q was notified of the transfer and did not oppose the transfer.

**Local Public Interest / Beneficial Use / Conservation of Water Resources:**

Added condition limiting rights to 0.02 cfs per acre at the field headgate. No other issues identified.

Review of the application finds there is not clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this transfer application.